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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JARIN ALBERT GONZALEZ, Defendant and Appellant.	G055157 (Super. Ct. No. 15CF0356) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Michael A. Leversen, Judge. Affirmed with modification.

Donna L. Harris, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, Scott Taylor and Brendon W. Marshall, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jarin A. Gonzalez appeals after a jury found him guilty of committing an assault with force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)[1], and found the allegations that he inflicted great bodily injury during the assault to be true (§ 12022.7, subd. (a)). Based on his admission of certain prior convictions and prison sentences, the trial court sentenced him to an aggregate term of seven years in prison.

The primary issue Gonzalez raises on appeal concerns the trial court's denial of his motion challenging the prosecutor's use of preemptory challenges during the jury selection process. (*People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*); *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*).) He claims the court erred in concluding the prosecutor offered credible race-neutral reasons for excusing four specified jurors. He also asserts the court erred in imposing sentencing enhancements for both a prior serious felony conviction (§ 667, subd. (a)(1)) and for a prior prison term related to that conviction (§ 667.5, subd. (b)).

We find no merit in Gonzalez's contentions grounded in *Batson* and *Wheeler*, as the trial court followed the correct procedure and substantial evidence supports the court's ultimate conclusion. Gonzalez is correct, however, that the court erred when it imposed sentencing enhancements for the prior convictions. Accordingly, we order the court to modify the judgment by striking the one-year enhancement for the prison prior, and affirm the judgment as modified.

FACTS

One evening, Gonzalez got into an altercation with a friend who had been drinking. During the dispute, Gonzalez picked up his friend and slammed her into the ground, causing her head to hit the pavement. She lost consciousness and was

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[1] All statutory references are to the Penal Code.

hospitalized for the next five days due to, among other injuries, a concussion, a fractured skull, and bruising and bleeding in her brain.

The Orange County District Attorney charged Gonzalez with felony assault with force likely to produce great bodily injury (§ 245, subd. (a)(4)), and misdemeanor battery (§ 242). It was also alleged he inflicted great bodily injury during the assault (§ 12022.7, subd. (a)), had suffered a prior strike conviction (§§ 667, subds. (d)-(e)(1) & 1170.12, subds. (b)-(c)(1)), a prior serious felony conviction (§ 667, subd. (a)(1)), and served a prior prison term (§ 667.5, subd. (b)).

During voir dire, and after the prosecutor exercised four of five peremptory challenges to remove individuals of Hispanic ethnicity from the jury panel, Gonzalez brought a *Batson*/*Wheeler* motion, contending the prosecutor had excluded prospective jurors based on their ethnicity. Without expressly finding that Gonzalez had established a prima facie case of discrimination, the court invited the prosecutor to give her reasons for excusing the four jurors at issue. She did so, and the court denied Gonzalez's motion based on the proffered reasons.

A jury returned a guilty verdict as to the assault charge, and a not guilty verdict on the misdemeanor battery. Gonzalez admitted the prior strike conviction, the prior serious felony conviction, and the prior prison term associated with that serious felony conviction. The court exercised its discretion to strike the prior strike conviction and the great bodily injury enhancement for sentencing purposes, resulting in an aggregate sentence of seven years in prison – two years for the assault and a five-year enhancement for the prior serious felony conviction. It also imposed and stayed a one-year enhancement for the prison prior.

DISCUSSION

Gonzalez, who is Hispanic, contends he was deprived of his constitutional rights to equal protection and a representative jury because the prosecutor exercised

peremptory challenges to exclude Hispanics from the jury. On the record before us, we find no basis to overturn the judgment because substantial evidence supports the trial court's determination that the prosecutor exercised preemptory challenges in a constitutional manner. Because the court erred, however, in imposing and staying a one-year prior prison enhancement in addition to a five-year "serious felony" enhancement for the same underlying conviction, we order that the former enhancement be stricken.

A. Batson/Wheeler

"Peremptory challenges are a long-standing feature of civil and criminal adjudication. . . . ¶ At issue in a *Batson/Wheeler* motion is whether any specific prospective juror is challenged on account of bias against an identifiable group distinguished on racial, religious, ethnic, or similar grounds. [Citation.]" (*People v. Gutierrez* (2017) 2 Cal.5th 1150, 1157-1158 (*Gutierrez*).) "[T]he exercise of even a single peremptory challenge solely on the basis of race or ethnicity offends the guarantee of equal protection of the laws under the Fourteenth Amendment to the federal Constitution. [Citations.] Such conduct also violates a defendant's right to trial by a jury drawn from a representative cross-section of the community under . . . the state Constitution. [Citation.]" (*Id*. at p. 1157.)

"When a party raises a claim that an opponent has improperly discriminated in the exercise of peremptory challenges, the court and counsel must follow a three-step process. First, the . . . movant must demonstrate a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose. . . . [T]his first step [is satisfied] by producing '"evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred."' [Citations.]

"Second, if the court finds the movant meets the threshold for demonstrating a prima facie case, the burden shifts to the opponent of the motion to give an adequate nondiscriminatory explanation for the challenges. To meet the second step's

requirement, the opponent of the motion must provide 'a "clear and reasonably specific" explanation of his "legitimate reasons" for exercising the challenges.' . . . '"[U]nless a discriminatory intent is inherent in the prosecutor's explanation,'" the reason will be deemed neutral. [Citation.]" (*Gutierrez, supra*, 2 Cal.5th at p. 1158.)

"Third, if the opponent indeed tenders a neutral explanation, the trial court must decide whether the movant has proven purposeful discrimination. [Citation.] In order to prevail, the movant must show it was '"more likely than not that the challenge was improperly motivated."' [Citation.] This portion of the *Batson/Wheeler* inquiry focuses on the subjective genuineness of the reason, not the objective reasonableness[, meaning] the credibility of the explanation becomes pertinent." (*Gutierrez, supra*, 2 Cal.5th at p. 1158.) "[T]he trial court must determine whether the advocate allowed his or her calculus to be infected by racial bias and then lied to the court in an attempt to get away with it." (*People v. Lenix* (2008) 44 Cal.4th 602, 626 (*Lenix*).)

"'"Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy."'" (*People v. Winbush* (2017) 2 Cal.5th 402, 434 (*Winbush*), citing *Miller-El v. Cockrell* (2003) 537 U.S. 322, 339 (*Miller-El I*).) "This assessment may also take into account 'the court's own experiences as a lawyer and bench officer in the community, and even the common practices of the advocate and the office that employs him or her.'" (*Winbush, supra*, 2 Cal.5th at p. 434; see *Gutierrez, supra*, 2 Cal.5th at pp. 1158-1159.) "To satisfy herself that an explanation is genuine, the presiding judge must make 'a sincere and reasoned attempt' to evaluate the prosecutor's justification, with consideration of the circumstances of the case known at that time, her knowledge of trial techniques, and her observations of the prosecutor's examination of panelists and exercise of for-cause and peremptory challenges. [Citation.] Justifications that are 'implausible or fantastic . . .

may (and probably will) be found to be pretexts for purposeful discrimination.' [Citation.]" (*Gutierrez, supra*, 2 Cal.5th at p. 1159.)

In reviewing the trial court's ruling on a *Batson/Wheeler* motion, we ordinarily apply a substantial evidence standard of review. (*People v. McDermott* (2002) 28 Cal.4th 946, 971.) This means "'[w]e review [the] court's determination regarding the sufficiency of tendered justifications with "'great restraint."' [Citation.] We presume an advocate's use of peremptory challenges occurs in a constitutional manner. [Citation.]" (*Gutierrez, supra*, 2 Cal.5th at pp. 1159.) And when it comes to justifications based on demeanor and other observations which are inherently difficult to capture in a written transcript, we are particularly deferential to the trial court because of its unique ability to draw on its contemporaneous observations when assessing a prosecutor's credibility concerning such matters. (See *Miller–El I, supra*, 537 U.S. at p. 339; *Lenix, supra*, 44 Cal.4th at p. 613.)

If, as here, the trial court did not make an express ruling at the first stage concerning a prima facie case of discrimination and instead proceeded to inquire about the prosecutor's reasons for excusing jurors, our review is limited to the second and third stages of the *Batson/Wheeler* inquiry—neutrality and credibility. (*Hernandez v. New York* (1991) 500 U.S. 352, 359; *People v. Scott* (2015) 61 Cal.4th 363, 387, fn. 1.)

As part of our third stage review, we must engage in a comparative analysis of the jurors at issue and other jurors to the extent we have an adequate record. (*Gutierrez, supra*, 2 Cal.5th at p. 1174.) "'The rationale for comparative juror analysis is that a side-by-side comparison of a prospective juror struck by the prosecutor with a prospective juror accepted by the prosecutor may provide relevant circumstantial evidence of purposeful discrimination by the prosecutor. [Citations.]'" (*Winbush, supra*, 2 Cal.5th at p. 442.) While not determinative, it certainly is probative. (*People v. Smith* (2018) 4 Cal.5th 1134, 1147, citing *Lenix, supra*, 44 Cal.4th at p. 627.) That said, the Supreme Court has cautioned "'"that comparative juror analysis on a cold appellate

record has inherent limitations." [Citation.] In addition to the difficulty of assessing tone, expression, and gesture from the written transcript of voir dire, we [must] keep in mind the fluid character of the jury selection process and the complexity of the balance involved. "Two panelists might give a similar answer on a given point. Yet the risk posed by one panelist might be offset by other answers, behavior, attitudes or experiences that make one juror, on balance, more or less desirable."'" (*Winbush, supra*, 2 Cal.5th at p. 442.)

We are mindful that "[a] trial court's conclusions are entitled to deference only when the court made a 'sincere and reasoned effort to evaluate the nondiscriminatory justifications offered.' [Citation.]" (*Gutierrez, supra*, 2 Cal.5th at p. 1159.) "'[W]hen the prosecutor's stated reasons are either unsupported by the record, inherently implausible, or both, more is required of the trial court than a global finding that the reasons appear sufficient.'" (*Id*. at p. 1171.) In addition, courts may not "substitute their own reasoning for the rationale given by the prosecutor, even if they can imagine a valid reason that would not be shown to be pretextual. '[A] prosecutor simply has got to state his reasons as best he can and stand or fall on the plausibility of the reasons he gives. . . . If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have been shown up as false.' [Citation.]" (*Id*. at p. 1159.) Exclusion of even one prospective juror for reasons impermissible under *Batson* and *Wheeler* constitutes structural error, requiring reversal. (*People v. Silva* (2001) 25 Cal.4th 345, 386.)

We review each of the jurors that were the subject of Gonzalez's *Batson/Wheeler* motion with these principles in mind.

Juror No. 118

The prosecutor's proffered reasons for excusing Juror No. 118 concerned her demeanor during voir dire and her occupation. Specifically, the prosecutor found her to be "very, very quiet . . . when answering questions to the extent that [the prosecutor]

actually had a hard time hearing her at points." In addition, her occupation as working for "the teamsters union-type activity" was in the prosecutor's mind, "very political[,]" and therefore the prosecutor believed it would be inadvisable to place her on a jury. The trial court found there were no "racial motive in these excuses."

Both of the prosecutor's reasons are plausible and supported by the record. Concerning Juror No. 118's quiet voice, it is conceivable a quiet demeanor would be of concern due to the interplay between jurors during deliberations and the need for unanimity to obtain a guilty verdict. And given that the volume of a person's voice is not something that can be reflected in the written record, we defer to the trial court's evaluation. (*People v. Reynoso* (2003) 31 Cal.4th 903, 924-925 (*Reynoso*).) The fact that defense counsel did not counter the prosecutor's explanation – something which we would expect in this context if the observations were not accurate – bolsters our confidence in the trial court's credibility determination. (*People v. Adanandus* (2007) 157 Cal.App.4th 496, 510 [fact that "neither the trial court nor defense counsel below contradicted the prosecutor's account of any of the challenged jurors' demeanor . . . suggest[s] the prosecutor's description was accurate"].)

As for Juror No. 118's job, she stated she worked as an office manager for a Teamsters local union. There is nothing impermissible or discriminatory about excusing a potential juror based on the prosecutor's subjective belief about a particular profession, even if objectively unreasonable. (*People v. Chism* (2014) 58 Cal.4th 1266, 1317) As our Supreme Court has explained, "If a prosecutor can lawfully peremptorily excuse a potential juror based on a hunch or suspicion, or because he does not like the potential juror's hairstyle, or because he observed the potential juror glare at him, or smile at the defendant or defense counsel, then surely he can challenge a potential juror whose occupation, in the prosecutor's subjective estimation, would not render him or her the best type of juror to sit on the case for which the jury is being selected." (*Reynoso, supra*, 31 Cal.4th at pp. 924-925.)

Gonzalez has not shown error in the trial court's *Batson*/*Wheeler* determination concerning Juror No. 118.

Juror No. 125

When asked by the trial court for an explanation of why she excused Juror No. 125, the prosecutor initially provided two reasons: (1) "he appeared to lack of life experience[;]" and (2) in response to a question concerning self-defense and a hypothetical scenario offered by the prosecutor, he said he believed the scenario exemplified excessive force. After a brief colloquy with the court and defense counsel concerning whether Juror No. 125 was Hispanic, the court observed there was no occupation listed for him, the prosecutor added that another reason for excusing him was his unemployed status.

Each of these reasons is plausible and race-neutral. (See *People v. Gonzales* (2008) 165 Cal.App.4th 620, 631 (*Gonzales*) [youth and lack of life experience]; *People v. Perez* (1994) 29 Cal.App.4th 1313, 1328 (*Perez*) [limited life experience]; *Stubbs v. Gomez* (9th Cir. 1999) 189 F.3d 1099, 1106 (*Stubbs*) [employment status and personal history]; *People v. Jones* (2011) 51 Cal.4th 346, 363 [concerns about potential juror accepting a known defense theory].) They are also supported by the record. Juror No. 125 stated he was 21 years old, single with no children, attended "some college," was unemployed and had never served on a jury. He was also the first one the prosecutor asked to respond to a hypothetical concerning self-defense and use of excessive force.

Gonzalez urges a comparative juror analysis, but it is of no avail. He claims two non-Hispanics who were not excused gave similar answers to the prosecutor's self-defense hypothetical. Even if true, the two other jurors Gonzalez identifies did not have the same characteristics relied on by the prosecutor as additional justification for excusing Juror No. 125. Both were older, married, and employed, and one had three children. Jury selection is a dynamic process which involves a complex balancing of a

multitude of factors by the prosecution and the defense. (*People v. Woodruff* (2018) 5 Cal.5th 697, 754, citing *Winbush, supra*, 2 Cal.5th at p. 442.) A comparison to jurors who are dissimilar in material aspects from the excused juror's characteristics relied upon by the prosecutor offered little if no comparative no value in this context. (See *Miller-El v. Dretke* (2005) 545 U.S. 231, 247 & fn. 6; *Winbush, supra*, 2 Cal.5th at p. 443.)

Additionally, similar answers to a question during voir dire is not, by itself, dispositive. A "'[m]yriad [of] subtle nuances . . . , including attitude, attention, interest, body language, facial expression and eye contact [,] . . . may legitimately impact the prosecutor's decision to strike or retain the prospective juror." (*People v. Williams* (2013) 56 Cal.4th 630, 662.) But a cold transcript cannot convey those subtleties. (*Ibid*.) And because Gonzalez did not raise the issue of comparative analysis in the trial court, the prosecutor never had the opportunity to explain any perceived differences between the Juror No. 125 and the other jurors. (See *Lenix, supra*, 44 Cal.4th at pp. 623.) Thus, """a formulaic comparison of isolated responses [is] an exceptionally poor medium to overturn a trial court's factual finding""" concerning the subjective sincerity of a prosecutor's proffered reasons for excusing a juror. (*Winbush, supra*, 2 Cal.5th at p. 442.)

In sum, substantial evidence supports the trial court's conclusion the prosecutor challenged Juror No. 125 for reasons other than race.

Juror No. 134

As for Juror No. 134, the prosecutor gave three explanations for excusing him. First, she observed "[h]e had his sunglasses on his head throughout the court's entire *voir dire*[,]" which the prosecutor viewed as disrespectful. Second, she noted that "[a]t points he was looking at the ground" and "[a]t one point he . . . had his head on the back of the wall and [was] looking up." The prosecutor believed this conveyed he was "very [bored] or sleeping" and "checked out throughout the entire process." Third, she

referenced a personal experience he conveyed about his uncle being beaten up by his aunt.

These explanations are inherently plausible. With the burden on the prosecution of proving guilt beyond a reasonable doubt, the concern about jurors being disinterested and not paying attention during trial is obvious. (See *Stubbs, supra*, 189 F.3d at p. 1105 [passivity and inattentiveness are "'valid, race-neutral explanations for excluding jurors'"]; *United States v. Power* (9th Cir. 1989) 881 F.2d 733, 740 [demeanor during *voir dire* that "made the prosecutor believe [juror] would not be an attentive juror" is adequate race neutral explanation].) And, given that it was probable the defense would argue Gonzalez acted in self-defense to the female victim's allegedly aggressive behavior, the prosecutor reasonably might be concerned about anyone who had some personal experience with female aggressors.

While we acknowledge we are unable to discern from the record whether Juror No. 134 actually had sunglasses on his head or acted in the manner described by the prosecutor, particularly because the court made no comment about those matters, it does not impede our review. The Supreme Court has confirmed that "[a] prosecutor's demeanor observations, even if not explicitly confirmed by the record, are a permissible race-neutral ground for peremptory excusal, especially when they are not disputed in the trial court." (*People v. Mai* (2013) 57 Cal.4th 986, 1052.) There is no such dispute in this case.

Further, the record supports the third explanation concerning Juror No. 134's family experience. In response to a question from the defense concerning experience with a female starting a fight, Juror No. 134 stated "[he] saw [his] aunt beat up [his] uncle."

Gonzalez compares Juror No. 134 to another juror who also shared an experience concerning an assault, but was impaneled nonetheless. However, there was a meaningful difference between what each juror conveyed. The impaneled juror stated his

wife told him she was the victim of "various assaults" in a "[f]amily situation" when she was a child, while Juror No. 134 explained he personally witnessed his aunt "beat up" his uncle. Unlike the impaneled juror's experience, Juror No. 134 described an experience more similar in nature to the charges filed against Gonzalez.

Given the plausible nature of the prosecutor's explanations and the supporting factual basis, the trial court was under no obligation to inquire further as to Juror No. 134. (*Reynoso, supra*, 31 Cal.4th at p. 923; *People v. Silva* (2001) 25 Cal.4th 345, 386.) We find no error in its denial of Gonzalez's *Batson/Wheeler* motion as to this juror.

Juror No. 155

Juror No. 155 was a 33-year-old, single female with no children. The prosecutor's claimed basis for her dismissal was her general inexperience in life and her educational background. Like the prosecutor, she had a bachelor of arts degree in communications, and the prosecutor believed people in this field tend to be indecisive and "too aware of what's going on as far as current events."

Both of these reasons are plausible, race-neutral explanations, even though no basis exists to conclude jurors knowledgeable about current events are inadequate jurors. (*People v. Hamilton* (2009) 45 Cal.4th 863, 901 [prosecutor may excuse juror for arbitrary reasons """so long as the reasons are not based on impermissible group bias"""]; see *Reynoso, supra*, 31 Cal.4th at pp. 924-925 [educational background, and prosecutor's hunch or suspicion]; *Gonzales, supra*, 165 Cal.App.4th at p. 631 [youth and lack of life experience]; *Perez, supra*, 29 Cal.App.4th at p. 1328 [limited life experience]; *People v. Landry* (1996) 49 Cal.App.4th 785, 790, [educational background].) They are also factually supported in the record by Juror No. 155's answers to questions concerning her age, marital and family status, and educational background.

Gonzalez compares Juror No. 155 to three other non-Hispanic jurors who were impaneled, arguing the similarities show the prosecutor's reasons were pretextual.

But each comparison is too limited in scope to be meaningful.[2] Though Juror No. 105 had a communications degree, she also took law related classes while in college, her father was an attorney, and she previously sat through a criminal trial, acting as support for the family of her friend who died in a vehicle collision caused by a driver under the influence. These latter characteristics materially distinguished her from Juror No. 155 in terms of life experience. The same is true about Juror Nos. 112 and 138, who were 13 and 22 years older than Juror No. 155, respectively. These latter two jurors also did not have communications degrees. "Although jurors need not be completely identical for a comparison to be probative [citation], 'they must be materially similar in the respects significant to the prosecutor's stated basis for the challenge.'" (*Winbush*, *supra*, 2 Cal.5th at p. 442.)

Substantial evidence supports the trial court's determination that Gonzalez failed to demonstrate the reasons the prosecutor provided for excusing Juror No. 155 were pretextual.

B. Sentencing

Gonzalez admitted to a prior serious felony conviction and a prior prison term associated with that conviction, and the trial court (1) imposed a five-year sentence enhancement for the prior serious felony under section 667, subdivision (a) (1), and (2) imposed and stayed a one-year enhancement for the prison prior associated with such felony. Gonzalez claims the court lacked the authority to do both under the circumstances, and asks that the one-year enhancement be stricken. We agree.

Both Gonzalez and the Attorney General accurately observe that a court may not enhance a sentence for a prior conviction (§ 667, subd. (a)(1)) and for a prior separate prison term (§ 667.5, subd. (b)) associated with that same conviction. (*People v.*

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[2] Gonzalez makes one additional comparison, however it is to a juror with a Hispanic surname and, thus, ineffective in showing racial discrimination.

Jones (1993) 5 Cal.4th 1142, 1144-1145, 1150 (*Jones*).) They disagree, however, on whether a court may impose the enhancement for the prison prior while simultaneously staying it.

Our Supreme Court provided the answer in *Jones*. There, the trial court had imposed a five-year sentence enhancement for a prior serious felony under section 667, subdivision (a), and a one-year sentence enhancement for a prior prison sentence associated with that serious felony under section 667.5, subdivision (b). (*Jones, supra,* 5 Cal.4th at p. 1145.) On appeal, the Court addressed the question of whether both enhancements may be "imposed cumulatively." (*Id*. at p. 1149.) It concluded they may not, explaining that "when multiple statutory enhancement provisions are available for the same prior offense, one of which is a section 667 enhancement, the greatest enhancement, but only that one, will apply." (*Id*. at p. 1150.) In disposing of the case, the Court determined it was appropriate to "remand[] [it] to the trial court with directions to strike the one-year enhancement of [the] defendant's sentence for his prior offense . . . under subdivision (b) of section 667.5, and to send to the Department of Corrections a corrected abstract of judgment." (*Id*. at p. 1153.)

The Court most recently confirmed such a disposition is appropriate when faced with enhancements for a prior conviction and a prior prison term for the same conviction. (*People v. Anderson* (2018) 5 Cal.5th 372, 426; see also *People v. Perez* (2011) 195 Cal.App.4th 801, 805 [trial court should strike rather than stay the lesser enhancement]; *People v. Dejourney* (2011) 192 Cal.App.4th 1091, 1094, fn. 3; *People v. Harris* (1994) 22 Cal.App.4th 1575, 1585; but see *People v. Brewer* (2014) 225 Cal.App.4th 98, 104-105 [court may stay enhancement under California Rules of Court, rule 4.447. rather than strike it].)

Accordingly, we will order that that trial court amend the judgment to strike the one-year prior prison term enhancement imposed under section 667.5, subdivision (b).

DISPOSITION

We remand this matter to the trial court with directions to strike the one-year enhancement for the prison prior (§ 667.5, subd. (b)). The clerk of the superior court is ordered to prepare a corrected abstract of judgment reflecting the above modification and to forward a copy of it to the Department of Corrections and Rehabilitation. As corrected, the judgment is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

THOMPSON, J.